

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
BALTIMORE DIVISION**

JASON ALFORD *et al.*,

Plaintiffs,

v.

THE NFL PLAYER DISABILITY &  
SURVIVOR BENEFIT PLAN *et al.*,

Defendants.

Case No. 1:23-cv-00358-JRR

**DECLARATION OF MEREDITH GARAGIOLA IN SUPPORT OF  
DEFENDANTS' JOINT OPPOSITION TO  
PLAINTIFFS' MOTION TO COMPEL DISCOVERY**

I, Meredith Garagiola, hereby declare pursuant to 28 U.S.C. § 1746, under the penalty of perjury, that the following is true and correct; that I have personal knowledge of the matters set forth herein, or knowledge based on my review of business records; and that, if called to testify as a witness in this action, I could and would testify competently thereto:

1. I am an attorney at O'Melveny & Myers LLP, counsel of record for Defendants the NFL Player Disability & Survivor Benefit Plan, the NFL Player Disability & Neurocognitive Benefit Plan (collectively, the "Disability Plan" or "Plan"), the Bert Bell/Pete Rozelle NFL Player Retirement Plan (the "Retirement Plan," and with the Disability Plan, the "Plans"), and the Disability Board of the NFL Player Disability & Neurocognitive Benefit Plan (the "Board") in this matter.

2. Defendants produced the complete administrative records for the at-issue disability claims filed by: Plaintiffs Jason Alford, Daniel Loper, Willis McGahee, and Michael McKenzie on August 1, 2024; and Plaintiffs Jamize Olawale, Eric Smith, Charles Sims, Joey Thomas, and Lance Zeno on August 7, 2024.<sup>1</sup> The administrative records for the named Plaintiffs and Mr. Parsons total approximately 11,694 pages, and include copies of all documentary evidence presented to the Disability Initial Claims Committee (the "Committee") and Disability Board (the "Board") in connection with each Plaintiff's at-issue application and appeal. Included in the August 1, 2024 production were all relevant Plan documents and amendments for the relevant time period.

3. On October 2, 2024, Defendants produced Neutral Physician contracts covering the relevant period for the 48 different Neutral Physicians who examined the named Plaintiffs.

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<sup>1</sup> On August 26, 2024, consistent with Plan practice, Defendants provided the administrative record for Plaintiff Alex Parsons. Defendants maintain that Mr. Parsons is no longer a party to this litigation.

On that date, Defendants also produced Neutral Physician orientation manuals for the following areas: General, Neurology and Neuropsychology, Orthopedics, and Psychiatry.

4. Defendants produced the complete player files that the Plan maintains for Messrs. Alford, Sims, Olawale, McGahee, and Parsons on October 25, 2024; and Messrs. Thomas, McKenzie, Smith, Zeno, and Loper on November 1, 2024 and November 18, 2024. The complete player files for the named Plaintiffs and Mr. Parsons total approximately 55,217 pages and include approximately 68 decision letters, 101 PRFs, and 108 physician narratives. A player's "player file" contains all documents related to that player, including, for each Plaintiff, the player's complete administrative record for the at-issue claims, as well as additional PRFs, narratives, and decision letters regarding applications that were not mentioned in the complaint.

5. On November 18, 2024, Defendants produced data files showing, *inter alia*, (1) the outcomes of all disability benefit applications and appeals filed by all claimants beginning January 1, 2018, with an application status of "Completed" or blank; (2) whether the applications were decided based on medical criteria or on administrative criteria (such as failure to show up for a required medical examination); and (3) the mix of Neutral Physicians who conducted the medical examinations for each application. These text files contained the file names "Disability Appeals" and "Disability Applications."

6. On November 18, 2024, Defendants also produced R code scripts in support of the Declaration of David B. Lasater in Support of Defendants' Opposition to Plaintiffs' Motion for Class Certification. Plaintiffs inaccurately assert at FN 21 of their Memorandum in Support of Plaintiffs' Motion to Compel Discovery ("Mot.") that Defendants did not "produce the data in a reasonably usable format." Mot. at 21 n.21. In fact, Plaintiffs' counsel acknowledged to Defendants on November 25, 2024 that they "are familiar with R file," which is the standard data

format used by most statisticians. A copy of the parties' email correspondence regarding this production is attached as Exhibit A.

7. On November 26, 2024, at Plaintiffs' request, Defendants re-produced the "Disability Appeals" and "Disability Applications" data text files in Excel format, and produced data extracted from the R files that were previously produced in a format that could be opened in Excel—as the R files themselves cannot be directly converted into Excel and must be opened using the R program, which is a free, open-source software program. Specifically, Defendants produced the following .CSV files generated as output from the R script that are relied upon by Dr. Lasater and the following Excel spreadsheets that prepare the .CSV files for presentation in Dr. Lasater's declaration:

- a. FN Application Encounters.csv
- b. FN Appeal Encounters.csv
- c. LOD Chi Square Table - Median.csv
- d. LOD Chi Square Table - Quartile.csv
- e. LOD Chi Square Table - Appeals -Quartile.csv
- f. LOD Chi Square Table - Median - Appeals.csv
- g. NCD Chi Square Table - Median.csv
- h. NCD Chi Square Table - Quartile.csv
- i. NCD Chi Square Table - Appeals - Quartile.csv
- j. NCD Chi Square Table - Median - Appeals.csv
- k. Summary Table for Report Appendix - Application Median.xlsx
- l. Summary Table for Report Appendix - Application Quartile.xlsx
- m. Summary Table for Report Appendix - Appeal Median.xlsx

- n. Summary Table for Report Appendix - Appeal Quartile.xlsx
- o. T&P Chi Square Table - Median.csv
- p. T&P Chi Square Table - Quartile.csv
- q. T&P Chi Square Table - Appeals - Quartile.csv
- r. T&P Chi Square Table - Median - Appeals.csv
- s. Duplicates.csv

Executed this 10th day of December, 2024 at Washington, D.C.

  
Meredith N. Garagiola

# Exhibit A

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**From:** Garagiola, Meredith N.  
**Sent:** Tuesday, November 26, 2024 6:35 PM  
**To:** Nikki Guntner; Le, Jonathan C.  
**Cc:** McDonnell, Kelly; Jacob, Greg; McKeen, Elizabeth L.; Falcone, Katie; Ben Barnett; Dion Kekatos; Hillary Fidler; Doug Kreis; Brad Bradford; Bryan Aylstock; Samuel Katz; Julia Damron; Caleb Seely (External)  
**Subject:** RE: Alford v. NFL - Request for Meet and Confer re: Defendants' Production 7

Nikki,

We will be sending a copy of the re-production of the .txt files shortly to you and the others copied on this email via secure file share. To avoid confusion we have given them new Bates numbers.

Regarding your question, "Is it Defendants' position that you will not produce any transformed data, outputs, visualizations, or other files actually created by the R scripts and relied upon by Mr. Lasater for his expert report[,]" as we previously explained, the R script that we produced is the most complete, accurate, and comprehensive source document for Dr. Lasater's analysis. That script, coupled with the data files we have already produced (and are voluntarily re-producing today) contains everything Dr. Lasater relied upon.

It is both unnecessary and burdensome for Plaintiffs to request that Defendants separately generate, extract, and produce data and tables that Plaintiffs can easily access themselves via free, open source software by simply inputting the script we produced into R. We furthermore are not aware of any instance where a court has required a party to separately produce the files contained within an R script; on the contrary, it is our experience that courts have required the production of the R script itself as the definitive source.

Nevertheless, in good faith and in an effort to resolve this issue, we have extracted the .CSV files produced as output from the R script that are relied upon by Dr. Lasater, as well as Excel spreadsheets that prepare the .CSV files for presentation in Dr. Lasater's declaration. We will produce these files today alongside the re-production of the data files. It is neither feasible nor necessary for us to attempt to extract every output that appears in R as a separate file; as we have said, anyone who runs the R script in the R console will immediately have access to every output Dr. Lasater relied upon. There is therefore nothing further for us to produce with respect to Dr. Lasater's statistical analysis.

You raised your data dictionary query for the first time on Saturday, and it is now a holiday week. We have passed on your query, and we expect to be able to respond early next week.

Best,  
Meredith

**O'Melveny**

**Meredith Garagiola**

She, her, hers

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**From:** Nikki Guntner <NGuntner@awkolaw.com>

**Sent:** Monday, November 25, 2024 2:04 PM

**To:** Garagiola, Meredith N. <mgaragiola@omm.com>; Le, Jonathan C. <jle@omm.com>

**Cc:** McDonnell, Kelly <kmcdonnell@omm.com>; Jacob, Greg <gjacob@omm.com>; McKeen, Elizabeth L. <emckeen@omm.com>; Falcone, Katie <kfalcone@omm.com>; Ben Barnett <BBarnett@SeegerWeiss.com>; Dion Kekatos <DKekatos@seegerweiss.com>; Hillary Fidler <HFidler@SeegerWeiss.com>; Doug Kreis <DKreis@awkolaw.com>; Brad Bradford <BBradford@awkolaw.com>; Bryan Aylstock <BAylstock@awkolaw.com>; Samuel Katz <samkatz@athlawllp.com>; Julia Damron <julia@athlawllp.com>; Caleb Seely (External) <CSeeley@seegerweiss.com>

**Subject:** RE: Alford v. NFL - Request for Meet and Confer re: Defendants' Production 7

Meredith,

Thank you for your response. We look forward to receiving a re-production of the .txt files in native Excel tomorrow. Please be certain to copy our ILS team on the production.

We are familiar with R file. Our concern with Defendants' method of production here is the creation of unnecessary potential evidentiary disputes down the road in terms of Lasater's analysis. All of this could have been avoided had Defendants complied with the pre-production meet-and-confer obligations negotiated in the ESI Protocol. Is it Defendants' position that you will not produce any transformed data, outputs, visualizations, or other files actually created by the R scripts and relied upon by Mr. Lasater for his expert report?

Please let us know as promptly as possible whether you will provide us a data dictionary for V3 or the equivalent information set forth in your November 18<sup>th</sup> production cover letter. It is difficult to understand what further investigation would be necessary to satisfy this simple request. While we did receive the list of fields Defendants produced in your production letter, Plaintiffs require visibility into the total list of data fields available to inform whether the collection and production format is acceptable. As you know, the ESI protocol required exchange of such information. This information is particularly relevant given that Defendants are affirmatively relying on V3 data to try to defeat class certification and in seeking summary judgment against Plaintiffs Loper and Olawale.

We clearly disagree that Defendants' "disclosure" of V3 complied with the letter or spirit of Rule 26(f). Only once was V3 referenced by Defendants as a potential "legacy or decommissioned" platform that Defendants would investigate a source of discoverable information. We received no further follow-up on the platform and continue to reserve all our rights with respect to Production 7.

In light of your pledge to re-produce the V3 data tomorrow, we are canceling this afternoon's scheduled meet-and-confer.

Thank you,  
Nikki

---

**From:** Garagiola, Meredith N. <mgaragiola@omm.com>

**Sent:** Monday, November 25, 2024 11:06 AM

**To:** Nikki Guntner <NGuntner@awkolaw.com>; Le, Jonathan C. <jle@omm.com>

**Cc:** McDonnell, Kelly <kmcdonnell@omm.com>; Jacob, Greg <gjacob@omm.com>; McKeen, Elizabeth L. <emckeen@omm.com>; Falcone, Katie <kfalcone@omm.com>; Ben Barnett <BBarnett@SeegerWeiss.com>; Dion Kekatos <DKekatos@seegerweiss.com>; Hillary Fidler <HFidler@SeegerWeiss.com>; Doug Kreis <DKreis@awkolaw.com>; Brad Bradford <BBradford@awkolaw.com>; Bryan Aylstock <BAylstock@awkolaw.com>; Samuel Katz <samkatz@athlawllp.com>; Julia Damron <julia@athlawllp.com>; Caleb Seely (External)



<[CSeeley@seegerweiss.com](mailto:CSeeley@seegerweiss.com)>

**Subject:** RE: Alford v. NFL - Request for Meet and Confer re: Defendants' Production 7

Nikki,

We are able to produce the .txt files in excel and will do so on an expedited basis so that you receive them by tomorrow.

Regarding the R file, R is a free and public open source statistical software that anyone can access and is the most widely used software for statistical analysis. If plaintiffs load the script we produced into R and run the code, you will receive the same answers as Dr. Lasater. Producing an R file is the standard practice for all productions of statistical analysis and is therefore why we produced the code to plaintiffs in this format. All of the information you are requesting will be available if you load the script into R. That said, we will produce the R script as a text file if that is a format you will find easier to work with. Please do check with your statistical expert to make sure that would actually be helpful, however, as it is an additional burden on our end that we understand is unlikely to actually add any value. The R script should be precisely what your statistical expert is familiar with and can readily use.

We did discuss the V3 system on multiple meet and confers; your assertion that only a "single passing reference" was made is not accurate. We also provided a production letter that describes every data field that was contained in our production. We are investigating the data dictionary issue you raised and will respond on that point when we have information.

We think these responses address the open issues you identified for now, so we suggest taking down today's meet and confer.

Best,  
Meredith

**O'Melveny**

**Meredith Garagiola**

She, her, hers

[mgaragiola@omm.com](mailto:mgaragiola@omm.com)

O: +1-202-383-5115

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**From:** Nikki Guntner <[NGuntner@awkolaw.com](mailto:NGuntner@awkolaw.com)>

**Sent:** Monday, November 25, 2024 10:47 AM

**To:** Garagiola, Meredith N. <[mgaragiola@omm.com](mailto:mgaragiola@omm.com)>; Le, Jonathan C. <[jle@omm.com](mailto:jle@omm.com)>

**Cc:** McDonnell, Kelly <[kmcdonnell@omm.com](mailto:kmcdonnell@omm.com)>; Jacob, Greg <[gjacob@omm.com](mailto:gjacob@omm.com)>; McKeen, Elizabeth L.

<[emckeen@omm.com](mailto:emckeen@omm.com)>; Falcone, Katie <[kfalcone@omm.com](mailto:kfalcone@omm.com)>; Ben Barnett <[BBarnett@SeegerWeiss.com](mailto:BBarnett@SeegerWeiss.com)>; Dion

Kekatos <[DKekatos@seegerweiss.com](mailto:DKekatos@seegerweiss.com)>; Hillary Fidler <[HFidler@SeegerWeiss.com](mailto:HFidler@SeegerWeiss.com)>; Doug Kreis

<[DKreis@awkolaw.com](mailto:DKreis@awkolaw.com)>; Brad Bradford <[BBradford@awkolaw.com](mailto:BBradford@awkolaw.com)>; Bryan Aylstock <[BAylstock@awkolaw.com](mailto:BAylstock@awkolaw.com)>;

Samuel Katz <[samkatz@athlawllp.com](mailto:samkatz@athlawllp.com)>; Julia Damron <[julia@athlawllp.com](mailto:julia@athlawllp.com)>; Caleb Seely (External)

<[CSeeley@seegerweiss.com](mailto:CSeeley@seegerweiss.com)>

**Subject:** Re: Alford v. NFL - Request for Meet and Confer re: Defendants' Production 7

Meredith,

Following up on my email below. Please confirm whether Defendants agree to provide the information requested below on an expedited basis.

I will circulate a zoom for this afternoon pending your response. We can cancel if zoom proves unnecessary.

Thank you,  
Nikki

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**From:** Garagiola, Meredith N. <[mgaragiola@omm.com](mailto:mgaragiola@omm.com)>  
**Date:** Saturday, November 23, 2024 at 12:17 PM  
**To:** Nikki Guntner <[NGuntner@awkolaw.com](mailto:NGuntner@awkolaw.com)>, Le, Jonathan C. <[jle@omm.com](mailto:jle@omm.com)>  
**Cc:** McDonnell, Kelly <[kmcdonnell@omm.com](mailto:kmcdonnell@omm.com)>, Jacob, Greg <[gjacob@omm.com](mailto:gjacob@omm.com)>, McKeen, Elizabeth L. <[emckeen@omm.com](mailto:emckeen@omm.com)>, Falcone, Katie <[kfalcone@omm.com](mailto:kfalcone@omm.com)>, Ben Barnett <[BBarnett@SeegerWeiss.com](mailto:BBarnett@SeegerWeiss.com)>, Dion Kekatos <[DKekatos@seegerweiss.com](mailto:DKekatos@seegerweiss.com)>, Hillary Fidler <[HFidler@SeegerWeiss.com](mailto:HFidler@SeegerWeiss.com)>, Doug Kreis <[DKreis@awkolaw.com](mailto:DKreis@awkolaw.com)>, Brad Bradford <[BBradford@awkolaw.com](mailto:BBradford@awkolaw.com)>, Bryan Aylstock <[BAylstock@awkolaw.com](mailto:BAylstock@awkolaw.com)>, Samuel Katz <[samkatz@athlawllp.com](mailto:samkatz@athlawllp.com)>, Julia Damron <[julia@athlawllp.com](mailto:julia@athlawllp.com)>  
**Subject:** Re: Alford v. NFL - Request for Meet and Confer re: Defendants' Production 7

Thanks Nikki, we'll investigate and get back to you as soon as we can.

---

**From:** Nikki Guntner <[NGuntner@awkolaw.com](mailto:NGuntner@awkolaw.com)>  
**Sent:** Saturday, November 23, 2024 10:04:41 AM  
**To:** Garagiola, Meredith N. <[mgaragiola@omm.com](mailto:mgaragiola@omm.com)>; Le, Jonathan C. <[jle@omm.com](mailto:jle@omm.com)>  
**Cc:** McDonnell, Kelly <[kmcdonnell@omm.com](mailto:kmcdonnell@omm.com)>; Jacob, Greg <[gjacob@omm.com](mailto:gjacob@omm.com)>; McKeen, Elizabeth L. <[emckeen@omm.com](mailto:emckeen@omm.com)>; Falcone, Katie <[kfalcone@omm.com](mailto:kfalcone@omm.com)>; Ben Barnett <[BBarnett@SeegerWeiss.com](mailto:BBarnett@SeegerWeiss.com)>; Dion Kekatos <[DKekatos@seegerweiss.com](mailto:DKekatos@seegerweiss.com)>; Hillary Fidler <[HFidler@SeegerWeiss.com](mailto:HFidler@SeegerWeiss.com)>; Doug Kreis <[DKreis@awkolaw.com](mailto:DKreis@awkolaw.com)>; Brad Bradford <[BBradford@awkolaw.com](mailto:BBradford@awkolaw.com)>; Bryan Aylstock <[BAylstock@awkolaw.com](mailto:BAylstock@awkolaw.com)>; Samuel Katz <[samkatz@athlawllp.com](mailto:samkatz@athlawllp.com)>; Julia Damron <[julia@athlawllp.com](mailto:julia@athlawllp.com)>  
**Subject:** Re: Alford v. NFL - Request for Meet and Confer re: Defendants' Production 7

Meredith,

Thank you for your reply and agreement to promptly remedy the issues with Defendants' November 18th Production 7. We now have more fully investigated the issues surrounding Defendants' production of V3 data contained in Production 7. The results of that investigation are briefly summarized below. This is a significant issue for several reasons, including Defendants' reliance on the V3 data in their class certification briefing and motions for summary judgment which, under the current schedule, are being briefed concurrently.

Other than a single passing reference during a July 22, 2024 meet-and-confer discussion, Defendants never identified or provided any information regarding their V3 system during our multiple Rule 26(f) discussions, even though Mr. Vincent, a senior NFLBO official, describes V3 as "[t]he system of record for processing and tracing applications and appeals" in his Declaration in Support of Defendants' Motion for Summary Judgment for Plaintiff Loper. Given the centrality of ERISA benefit applications and appeals to this case, it is inconceivable that the V3 system was not raised or discussed with your clients. Moreover, given that defense expert Lasaster relies on a subset of V3 data to support his expert report, it must have been known to your team well in advance of November 18, 2024, when the Lasaster report was served. Finally, Section 11(g) of the negotiated ESI Protocol required Defendants to "meet and confer to address the production and production format of any relevant data contained in databases." Defendants plainly failed to comply with these obligations for Production 7.

Accordingly, please immediately take the following steps:

1. Although we converted the produced .txt files into Excel files (in order to see the data), file conversion is not an ordinary or accepted part of any eDiscovery production process. Moreover, we want to avoid future evidentiary disputes about the data produced by Defendants. Therefore, please re-produce the .txt files in native Excel format as soon as possible.
2. The as-produced version of the R files scripts (in which Mr. Lasaster ran queries and created visualizations of the V3 raw data included in his expert report) are completely unreadable and useless to us. Please immediately produce any transformed data, outputs, visualizations, or other files actually created by the R scripts and relied upon by Mr. Lasaster for his expert report in support of Defendant's opposition to class certification. If you are unable to produce such files, please advise us in writing.
3. Please provide us with either a data dictionary for V3 or a list of all data fields available in V3 akin to what is set forth in your November 18th cover letter for Defendants' Production 7.

Please confirm that you will produce or provide all this requested information as quickly as possible given the current schedule for both briefing class certification and Defendants' three separate motions for summary judgment. Provided you agree to provide all this information to us on an expedited basis, it may be possible to cancel the November 25th meet-and-confer.

In the meantime, we reserve all our rights with respect to Defendants' Production 7.

Thank you,  
Nikki

---

**From:** Garagiola, Meredith N. <[mgaragiola@omm.com](mailto:mgaragiola@omm.com)>

**Date:** Thursday, November 21, 2024 at 4:11 PM

**To:** Nikki Guntner <[NGuntner@awkolaw.com](mailto:NGuntner@awkolaw.com)>, Le, Jonathan C. <[jle@omm.com](mailto:jle@omm.com)>

**Cc:** McDonnell, Kelly <[kmcdonnell@omm.com](mailto:kmcdonnell@omm.com)>, Jacob, Greg <[gjacob@omm.com](mailto:gjacob@omm.com)>, McKeen, Elizabeth L. <[emckeen@omm.com](mailto:emckeen@omm.com)>, Falcone, Katie <[kfalcone@omm.com](mailto:kfalcone@omm.com)>, Ben Barnett <[BBarnett@SeegerWeiss.com](mailto:BBarnett@SeegerWeiss.com)>, Dion Kekatos <[DKekatos@seegerweiss.com](mailto:DKekatos@seegerweiss.com)>, Hillary Fidler <[HFidler@SeegerWeiss.com](mailto:HFidler@SeegerWeiss.com)>, Doug Kreis <[DKreis@awkolaw.com](mailto:DKreis@awkolaw.com)>, Brad Bradford <[BBradford@awkolaw.com](mailto:BBradford@awkolaw.com)>, Bryan Aylstock <[BAylstock@awkolaw.com](mailto:BAylstock@awkolaw.com)>, Samuel Katz <[samkatz@athlawllp.com](mailto:samkatz@athlawllp.com)>, Julia Damron <[julia@athlawllp.com](mailto:julia@athlawllp.com)>

**Subject:** RE: Alford v. NFL - Request for Meet and Confer re: Defendants' Production 7

Nikki,

We are happy to meet and confer about this on November 25<sup>th</sup> from 3:00-4:00. To try to expedite resolution of this issue, could you please let us know in advance what specifically the problem you are having with the data is, so that we can try to identify potential solutions on our end that we can then discuss together?

Best,  
Meredith

**O'Melveny**

**Meredith Garagiola**

She, her, hers

[mgaragiola@omm.com](mailto:mgaragiola@omm.com)

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**From:** Nikki Guntner <[NGuntner@awkolaw.com](mailto:NGuntner@awkolaw.com)>

**Sent:** Thursday, November 21, 2024 1:28 PM

**To:** Garagiola, Meredith N. <[mgaragiola@omm.com](mailto:mgaragiola@omm.com)>; Le, Jonathan C. <[jle@omm.com](mailto:jle@omm.com)>

**Cc:** McDonnell, Kelly <[kmcdonnell@omm.com](mailto:kmcdonnell@omm.com)>; Jacob, Greg <[gjacob@omm.com](mailto:gjacob@omm.com)>; McKeen, Elizabeth L.

<[emckeen@omm.com](mailto:emckeen@omm.com)>; Falcone, Katie <[kfalcone@omm.com](mailto:kfalcone@omm.com)>; Ben Barnett <[BBarnett@SeegerWeiss.com](mailto:BBarnett@SeegerWeiss.com)>; Dion

Kekatos <[DKekatos@seegerweiss.com](mailto:DKekatos@seegerweiss.com)>; Hillary Fidler <[HFidler@SeegerWeiss.com](mailto:HFidler@SeegerWeiss.com)>; Doug Kreis

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Samuel Katz <[samkatz@athlawllp.com](mailto:samkatz@athlawllp.com)>; Julia Damron <[julia@athlawllp.com](mailto:julia@athlawllp.com)>

**Subject:** Alford v. NFL - Request for Meet and Confer re: Defendants' Production 7

Meredith & Jonathan,

The message concerns Defendants' Production 7, which you sent us on November 18, 2024. In your cover letter, you state that the data being produced is responsive to Plaintiffs' First Set of Requests for Production and First Set of Interrogatories, though Defendants fail to identify the individual discovery request for which the production is being made. You also state that the data supports the Declaration of David B. Lasaster that Defendants attached to their Opposition to Plaintiffs' Motion for Class Certification, also filed on November 18<sup>th</sup>.

Unfortunately, the data in Production 7 was produced in a manner inconsistent with the requirements negotiated by the parties' the ESI protocol (ECF 110) and is unusable. We request a meet and confer on this issue as soon as possible so that the data is expeditiously reproduced to us in a reasonably usable form, consistent with the requirements of Rule 26, Rule 34, and the ESI Protocol.

Your cover letter to Production 7 states that the production consists of:

1. "a pipe-separated (|) text file that contains 6,315 completed player disability applications,1 exported from the NFLPBO's V3 system, decided between January 1, 2018 and July 31, 2024;" and
2. "a pipe-separated (|) text file that contains 1,733 completed player disability appeal records, exported from the NFLPBO's V3 system, decided between January 1, 2018 and July 31, 2024."

The format of your production renders the data completely unusable (see, e.g., NFL\_ALFORD-0067793, attached). The production and the production format are inconsistent with the parties' negotiated ESI Protocol which requires that the parties "meet and confer to confer to address the production and production format of any relevant data contained in databases, document management systems, collaboration tools or software, and structured, aggregated, or application software[.]"

Defendants made no effort to meet and confer with counsel for Plaintiffs on Production 7 prior to the production on November 18th. Accordingly, please provide us with your earliest availability to meet and confer on this issue so that the parties may "reasonably cooperate in the exchange of information concerning such databases to facilitate discussions on productions and production format," as required by the ESI protocol. Currently, Plaintiffs are available on November 25, 2024 from 3:00 to 4:00 p.m. and November 26, 2024 from 2:00 to 4:30 p.m. to discuss re-production of the data in Defendants' Production 7.

Please let us know if you are available during these proposed times. Given that Mr. Lasater relied on this data in formulating his expert report which supports Defendants' opposition to class certification, the reliance materials were

provided to us in a wholly unusable format, and the short deadline for Plaintiffs to file their Reply, this matter must be addressed and resolved as soon as possible.

Thank you,  
Nikki

**D. Nicole Guntner**

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